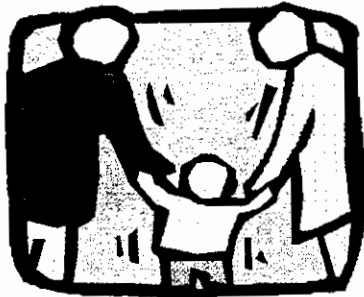


## How to Change or Enforce an Existing Visitation Order



## What You Must Prove And How to Present Your Case at the Hearing

### What to do to Enforce or Modify a Visitation or Parenting Time Order?

When you have a visitation/parenting time order and are being denied visitation as that order allows . . . you should file a *Motion for Contempt For Denying Visitation*.

When you want to change an existing visitation schedule, you must file a *Motion to Modify Visitation*.

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### Where to File

If your visitation/parenting time order was issued as part of a divorce or dissolution, you must file in the same court of common pleas that issued your divorce decree.

If you were never married to the parent of your child and your visitation/parenting time order was issued by a juvenile court, you must file in same juvenile court that issued the original order.

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### What You Need to Prove to Modify an Existing Visitation or Parenting Time Order

You must provide the Court with a reason or reasons for your request. You must convince the Judge or Magistrate that:

1. Circumstances have changed since the date of the previous court order setting visitation
2. As a result of those changes, it is only fair to you and in the best interest of the child or children to change the previous visitation schedule.

Example of circumstances that would justify a change in visitation:

- You obtained a new job which requires you to work during the hours you are scheduled to visit with your children.
- Your children are enrolled in some activity that is scheduled during the time you are supposed to visit with them.

You must also provide the Court with a proposed visitation or parenting time schedule.

Some counties have a standard visitation schedule. Check with the clerk of courts to see if your county has a standard schedule. If the court has such a schedule and it is good for you, indicate that you would like to get a "Standard Visitation Order".

If the standard visitation schedule will not work for you or your county does not have one, please write down the visitation schedule you would like the Court to approve (including all major holidays).

Some Factors the Court Looks at When Setting Visitation or Parenting Time Schedules:

- The distance between each parent's residence.
- The health and safety of the child
- The amount of time the child will have to spend with siblings.
- The mental and physical health of all parties.
- Each parent's willingness to reschedule missed visitation and to help to other parent easily exercise visitation rights.
- The age of the child.
- The child's adjustment to home, school, and community.

## What You Need to Prove to Enforce an Existing Visitation or Parenting Time Order

1. You have an existing visitation or parenting time order from the Court you are currently before.
2. The parent of your child is not following some part of that order or is interfering with your rights under the order.

### Example of things that constitute contempt of court

Your ex-spouse has custody of the children AND has not allowed you to visit with your children or has purposefully done things to make it difficult for you to visit with your children.

- When you come to get your child or children, they are not at the house and your ex-spouse will not tell you where they are.
- Your ex-spouse has moved and refuses to tell you the new address.

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### CAUTION:

You cannot force a parent to exercise visitation rights if they chose not to do so. A contempt motion on this basis will not be granted.

You cannot deny the other parent visitation because he or she failed to make child support payments. Child support and visitation are considered separate. In fact, you could be found in contempt of court if you took such action.

## The Court Hearing

### Be on time!

When the Court tells you the date and time of the hearing, **MARK THIS DATE IN YOUR CALENDAR**. If you do not show up at the hearing, the Court will automatically dismiss your motion.

### What to bring?

- ✓ Court's previous Visitation Order (If contempt motion - mark the part of the order that you think is not being enforced.)
- ✓ Witnesses who can who can testify (from what they have seen or heard) that what you tell the Court is true.
- ✓ Any evidence that will prove to the Court:
  - that circumstances have changed (contract of new employment, etc.) OR
  - that you are being denied visitation (letters you wrote reminding the other party of your right to visitation or diary/written notes regarding problems with visitation - including exact dates visitation was denied)

### What to do when it is your turn to speak?

#### Modification

1. Explain generally to the judge or magistrate:
  - what has changed since the first order was issued (you got a new job, etc.),
  - how this change has interfered with you or the other parent's right to visit with your child, and
  - how a change in the visitation schedule would improve the situation.
2. Tell the Court what you want them to do: increase or decrease amount of visitation time, change the time or place of visitation, etc.

### Contempt:

1. *Identify the exact portion of the previous visitation order that you think has been violated.*
2. *Explain to the Court when and how the order was violated. Be specific and to the point. . . provide dates and times for each act that violated the order.*
3. *Present evidence and witnesses. Show the Court any evidence you may have to prove that a violation occurred (copies of visitation records that you may have kept, etc.)*

If you have a witness who can back up what you are saying, ask the witness to state his/her name and relationship to you and then have them tell the Court what they know or have observed.

4. *State what you want the Court to do: enforce (make the other party comply with) the previous order, punish the other party for not complying with the visitation order, increase or decrease amount of visitation time, or change the time/place of visitation*

**TIP:** If your children do not want to testify in Court, ask the Judge/Magistrate to speak to the children in her office alone after she has heard all of the other witnesses. The Judge Probably will not let either you or your ex-spouse hear what the children say.

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